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No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

REPLY BRIEF FOR THE PETITIONER

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12 pp

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

SUMMARY OF THE ARGUMENT 1

ARGUMENT I 2

Respondent's insistence that there must be individualized probable cause for each container searched under the automobile exception is incorrect. It is sufficient that there is probable cause to search the automobile generally and that any container searched is capable of holding the object of the search.

ARGUMENT II 5

Even in the case of a residential search, where the expectation of privacy is higher than in an automobile, the personal places and belongings of nonsuspects are within the scope of a search warrant.

ARGUMENT III 7

Respondent's claim that individualized probable cause is needed to search a container in an automobile is inconsistent with her support of the rule adopted below, which, under some circumstances, allows a container to be searched on mere presumption and without individualized probable cause.

ARGUMENT IV 8

Cases involving searches of the person have no application to the search of a container under the automobile exception.

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

California v. Acevedo, 500 U.S. 565 (1991).....1, 2, 3, 4

Carroll v. United States, 267 U.S. 132 (1925)..... 4

Knowles v. Iowa, No. 97-7597, 1998 WL 840933 (U.S. Dec. 8, 1998) 9

Sibron v. New York, 392 U.S. 40 (1968)..... 9

United States v. Ayers, 924 F.2d 1468 (9th Cir. 1991) 6

United States v. Di Re, 332 U.S. 581 (1948)..... 9

United States v. Martinez-Fuerte, 428 U.S. 543 (1976) 5

United States v. Ross, 456 U.S. 798 (1982) ... 1, 2, 3, 4, 7

Ybarra v. Illinois, 444 U.S. 85 (1979) 9

CONSTITUTION

Fourth Amendment to the United States Constitution 8

OTHER AUTHORITY

2 Wayne R. LaFave, *Search and Seizure*, § 4.5(b) (3rd ed. 1996) 5

SUMMARY OF THE ARGUMENT

Respondent's primary contention is that the search of a container under the automobile exception must be based on probable cause specific to the container or its owner. The plain language of *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), however, refutes any notion that this is the rule. Respondent's view of the automobile exception would also abolish the concept of probable cause to search a car generally, absent the unusual situation where each occupant of the vehicle has independently furnished the officer probable cause to search.

Respondent's perceived need for probable cause specific to each item searched under the automobile exception is also refuted by the law of searches of residential premises, where the individual expectation of privacy is much higher. A doctrine known as the "community occupation situation" has developed which involves several occupants sharing a single residence. A search warrant for the residence based on the unlawful activities of just one occupant may validly be directed at the entire residence and its execution will permit the search of places and containers belonging to the nonsuspect occupants.

It must also be recognized that respondent's support for the rule adopted by the Wyoming Supreme Court is inconsistent with her position that there must be individualized probable cause as to each container searched under the automobile exception. Under the "notice" test adopted by the court, it is permissible to search containers without individualized probable cause absent

notice that the container belongs to a nonsuspect occupant of the car.

Finally, respondent's reliance on cases dealing with probable cause to search a person has no application to the search of a container under the automobile exception.

ARGUMENT I

Respondent's insistence that there must be individualized probable cause for each container searched under the automobile exception is incorrect. It is sufficient that there is probable cause to search the automobile generally and that any container searched is capable of holding the object of the search.

The rule formulated in *United States v. Ross*, 456 U.S. 798 (1982), and *California v. Acevedo*, 500 U.S. 565 (1991), to govern searches under the automobile exception is, by this Court's description, "one rule to govern all automobile searches." *Acevedo*, 500 U.S. at 580. It provides, comprehensively and unambiguously, "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825. Respondent and her *amici*, however, insist that an entirely different rule governs automobile searches: The scope of a search under the automobile exception is limited to places and items for which there is specific probable cause to believe contraband will be found. (Brief of Respondent, p. 2).

Respondent reads *Ross* and particularly *Acevedo* to stand for the proposition that "only containers which the

officer has probable cause to believe contain contraband may be searched." (Brief of Respondent, p. 9). *Acevedo*, however, involved a situation where police had probable cause to believe a particular package contained contraband before it was placed in a car. They had no probable cause to believe the car otherwise contained any contraband. In such a situation, placing the package in the car did not supply probable cause to search the car generally. *Acevedo*, 500 U.S. at 566-68, 580. The situation here, of course, is quite different because the officer did have probable cause to search the car generally.

Respondent has also misplaced her reliance on the language in *Ross* that the scope of a warrantless automobile search "is defined by the object of the search and the places in which there is probable cause to believe it may be found." 456 U.S. at 824. By this the Court did not mean that there must be probable cause specific to each container searched. As the language immediately following that sentence makes clear,[1] the Court was only indicating that when probable cause is limited to finding evidence in one place only, an officer may not search for it elsewhere, nor in places where it could not physically be located, and that when probable cause to search is confined to a single container the search itself is limited

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[1] The language reads: "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab." 456 U.S. at 824.

to that container. Here again the situation is different because Officer Baldwin's probable cause to search was not confined to a single location or container inside the car; he had probable cause to search the car generally.

Not only does respondent misread *Ross* and *Acevedo*, her interpretation of the rule governing automobile searches abolishes the traditional concept that police are entitled to perform a general search of a vehicle and its contents when they have "probable cause [ ] to believe that the vehicle is transporting contraband." *Ross*, 456 U.S. at 823; *Carroll v. United States*, 267 U.S. 132, 162 (1925). Instead, according to respondent, probable cause to perform a complete search of the car and its contents exists only where there is probable cause specific to every person in the vehicle. (Brief of Respondent, p. 18). When there is probable cause specific to fewer than everyone in the car, only those areas and articles directly associated with individual suspects may be searched. This surely was not the intendment of *Ross* and *Acevedo*. The Court could not have been unmindful of the fact that private vehicles often have more than one occupant and that the occupants will typically have personal belongings with them. If the Court had wanted to declare that containers may not be searched absent probable cause specific to the container, as respondent desires, it certainly would not have used the language it did.

Once it is established that there is "probable cause [ ] to believe that the vehicle is transporting contraband," *Ross*, 456 U.S. at 823, the object or unit subject to being searched is the automobile itself, along with the articles inside that could hold the object of the search. Indeed, in this case, respondent admitted below and the Wyoming

Supreme Court agreed that the drug related evidence developed through Young supplied probable cause to perform a general search of the automobile. (Pet. App. 5, 6, 21). Respondent's attempt to limit Officer Baldwin's probable cause, and concomitantly the scope of the vehicle search, to just Young (Brief of Respondent, pp. 7-10) must be rejected.

ARGUMENT II

Even in the case of a residential search, where the expectation of privacy is higher than in an automobile, the personal places and belongings of nonsuspects are within the scope of a search warrant.

Respondent maintains that the requirement of individualized suspicion needed to search a person's belongings also applies to searches of residential premises, a place where the expectation of privacy is greater than in a vehicle. *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976). Just as with automobile occupants, the personal effects of nonsuspect occupants of a home are beyond the lawful scope of a search, according to respondent. (Brief of Respondent, pp. 11-12). This argument, however, is plainly incorrect.

In 2 Wayne R. LaFave, *Search and Seizure*, § 4.5(b) at 532-33 (3rd ed. 1996), Professor LaFave discusses the "community occupation situation," where several persons occupy residential premises jointly rather than individually, sharing common living quarters although maintaining separate bedrooms. Even if only one of the occupants in such an arrangement supplies the probable

cause for a search warrant, a warrant directed at the entire premises is valid and will justify a search of every part of the place not secured against access by others. Professor LaFave offers an example:

> [I]f three persons share an apartment, using a living room, kitchen, bath and hall in common but holding separate bedrooms which are not locked, whichever one of the three is responsible for the described items being in the apartment could have concealed those items anywhere within, including the bedrooms of his cotenants.

Id. at 533 (footnote omitted). Illustrative of the numerous cases cited in support of the proposition is *United States v. Ayers*, 924 F.2d 1468 (9th Cir. 1991), where police developed probable cause to believe Eric Ayers was dealing drugs and lived at the residence of his father, Eddie Ayers. A search warrant was issued for the entire residence based on Eric's drug activities. Police searched the bedroom closet of the father and discovered a large amount of cash, leading to charges of income tax evasion. The court ruled the warrant and its execution were valid, notwithstanding that it was issued and directed at the illegal activities of just one of several occupants.

It is therefore apparent in the case law pertaining to nonsuspect occupants of both automobiles and residential premises that the status of being a "nonsuspect" does not shield a person's private space or possessions from inspection during a search of the larger area where those places and items are located. *See* Brief of Petitioner, cases cited at pp. 25-28. If police have probable cause to search a distinct unit of space, whether that space is defined by

the physical boundaries of an automobile, house or apartment, they are entitled to search the entire space, including articles and objects therein that belong to nonsuspects but which nevertheless could hold the object of the search. *Ross*, 456 U.S. at 821-22.

ARGUMENT III

Respondent's claim that individualized probable cause is needed to search a container in an automobile is inconsistent with her support of the rule adopted below, which, under some circumstances, allows a container to be searched on mere presumption and without individualized probable cause.

As discussed in Argument I, respondent and her *amici* insist there can be no search of a container under the automobile exception unless the officer has specific probable cause to believe the container holds the object of the search. At the same time, however, respondent and her *amici* support the "notice test" adopted by the Wyoming Supreme Court. (*See, e.g.*, Brief of Respondent, pp. 5-12, 16-19; Brief of The Legal Aid Society of New York City and The National Legal Aid and Defender Association, pp. 23-27; Brief of National Association of Criminal Defense Lawyers, pp. 3, 25). The difficulty with supporting both propositions is that one violates the other.

Under the "notice" test adopted by the Wyoming Supreme Court, "once probable cause is established to search a vehicle, an officer is entitled to search all containers therein which may contain the object of the search." (Pet. App. 21). This initial presumption (*Id.* at 15, 16) permitting a search of all containers is dispelled only

when the officer knows or should know that a container belongs to a nonsuspect passenger and there was no opportunity to conceal the contraband in the container to avoid detection. (*Id.* at 21-22). The rule therefore permits a search of a container belonging to a nonsuspect passenger, without probable cause specific to the container, where the officer does not know and should not be charged with the knowledge that the container belongs to a nonsuspect.

The Wyoming Supreme Court recognized that at times the rule will allow suspicionless searches of containers belonging to nonsuspects, and that this would "abrogate individualized Fourth Amendment protection," but concluded that it would not do so "unnecessarily." (Pet. App. 17). If respondent and her *amici* insist that the scope of a search under the automobile exception must always be confined to containers for which there is individualized probable cause, they should not support affirmance of a rule that violates that principle. From this it may be concluded that the search of a container under the automobile exception does not require individualized probable cause after all, even under respondent's view of the Fourth Amendment.

ARGUMENT IV

Cases involving searches of the person have no application to the search of a container under the automobile exception.

Respondent and her *amici* invoke the authority of several cases from this Court dealing with searches of the

person in an effort to establish the proposition that the search of the purse in this case was unlawful. Respondent relies chiefly on *United States v. Di Re*, 332 U.S. 581 (1948) (rejecting government argument that probable cause to search a car for contraband confers an incidental right to search an occupant of the car when the contraband sought is of a character that it might be concealed on the person); *Sibron v. New York*, 392 U.S. 40 (1968) (suspect's association with known narcotic addicts, without more, furnished no grounds for arrest or seizure of contraband from his person); and *Ybarra v. Illinois*, 444 U.S. 85 (1979) (warrant to search the premises of a tavern and the person of the bartender did not permit pat down search of a patron not suspected of possessing weapon; routine evidence search of person who is present on premises being searched not permitted). None of these cases support respondent's position. Likewise, respondent will find no support in this Court's recent automobile search case, *Knowles v. Iowa*, No. 97-7597, 1998 WL 840933 (U.S. Dec. 8, 1998) (issuance of citation in lieu of arrest does not permit search of car same as if arrest had occurred).

When a person is searched or seized on the basis of probable cause, the probable cause must be particularized to that person. *Ybarra*, 444 U.S. at 91. As discussed herein, searches of containers found in automobiles and on premises typically do not require such particularity, and this case involves no issue concerning the search of a person. The issue here is the scope of a search under the automobile exception as it pertains to containers found inside a vehicle. The particularity requirement for a search of the person is reasonable in its own context. In the case of an automobile, however, requiring specific

probable cause as to each container searched defeats the validity of the original probable cause to search the vehicle and virtually nullifies the automobile exception.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed and the case remanded for consideration of the remaining issues.

Respectfully submitted,

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